

1085

REGULAR WEEKLY SESSION-----ROANOKE CITY COUNCIL

May 20, 2004

2:00 p.m.

The Council of the City of Roanoke met in regular session on Thursday, May 20, 2004, at 2:00 p.m., in the City Council Chamber, fourth floor, Noel C. Taylor Municipal Building, 215 Church Avenue, S. W., City of Roanoke, Virginia, with Mayor Ralph K. Smith presiding, pursuant to Chapter 2, Administration, Article II, City Council, Section 2-15, Rules of Procedure, Rule 1, Regular Meetings, Code of the City of Roanoke (1979), as amended, and pursuant to Resolution No. 36639-030104 adopted by Council on Monday, March 1, 2004.

PRESENT: Council Members M. Rupert Cutler, Alfred T. Dowe, Jr., C. Nelson Harris, Beverly T. Fitzpatrick, Jr., Linda F. Wyatt, William D. Bestpitch, and Mayor Ralph K. Smith-----7.

ABSENT: None-----0.

OFFICERS PRESENT: Darlene L. Burcham, City Manager; William M. Hackworth, City Attorney; Jesse A. Hall, Director of Finance; and Mary F. Parker, City Clerk.

The invocation was delivered by The Reverend George E. Stevenson, Pastor, East Gate Church of the Nazarene.

The Pledge of Allegiance to the Flag of the United States of America was led by Mayor Smith.

PRESENTATIONS AND ACKNOWLEDGEMENTS:

PROCLAMATIONS: The Mayor presented a proclamation declaring the week of May 16 - 22, 2004, as Business Appreciation Week.

PROCLAMATIONS-EMERGENCY MEDICAL SERVICES: The Mayor presented a proclamation declaring the week of May 16 - 22, 2004, as Emergency Medical Services Week.

PROCLAMATIONS-PUBLIC WORKS: The Mayor presented a proclamation declaring the week of May 16 - 22, 2004, as National Public Works Week.

PROCLAMATIONS-YOUTH: The Mayor presented a proclamation declaring May 20, 2004, as Sara-Elizabeth Virginia Hurt Day.

CONSENT AGENDA

The Mayor advised that all matters listed under the Consent Agenda were considered to be routine by the Members of Council and would be enacted by one motion in the form, or forms, listed on the Consent Agenda, and if discussion was desired, that item would be removed from the Consent Agenda and considered separately. He called specific attention to four requests for Closed Session.

MINUTES: Minutes of the special meeting of Council held on Tuesday, November 25, 2003; and the regular meeting of Council held on Monday, April 15, 2004, were before the body.

Mr. Dowe moved that the reading of the minutes be dispensed with and that the minutes be approved as recorded. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

CITY COUNCIL: A communication from Council Member Alfred T. Dowe, Jr., Chair, City Council Personnel Committee, requesting that Council convene in a Closed Meeting to discuss the performance of three Council-Appointed Officers, pursuant to Section 2.2-3711(A)(1), Code of Virginia (1950), as amended, was before the body.

Mr. Dowe moved that Council concur in the request to convene in a Closed Meeting as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

COMMITTEES–SPECIAL SERVICE DISTRICT: A communication from the City Manager with regard to scheduling a public hearing on expansion of the Downtown Service District (DSD) boundaries, was before Council.

The City Manager advised that the Downtown Service District was first established by Council on December 8, 1986, effective July 1, 1987; Council approved expansion of the DSD to include boundaries that represent the DSD as it stands today; and the City Administration has received a request from Downtown Roanoke, Inc., (DRI) for consideration of further expansion of district boundaries.

It was explained that during 2003, DRI conducted a review of potential areas for further expansion of the Special Services District; the process included evaluation of land uses and functions of the areas, review of services and benefits that would be provided by the Special Services District to the areas, and meeting with property owners and business interests located within the areas; the area identified for expansion is located to the west of the current district, and is bounded by 5th Street on the east, 7th Street on the west, Marshall Avenue on the south, and the rear property lines of properties fronting on the north side of Campbell Avenue on the north.

The City Manager recommended that Council authorize the scheduling of a public hearing for Monday, June 21, 2004, at 7:00 p.m., or as soon thereafter as the matter may be heard, to consider expansion of the Downtown Service District, as requested by Downtown Roanoke, Inc.

Mr. Dowe moved that Council concur in the request of the City Manager as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

ROANOKE CIVIC CENTER–TELEPHONE EQUIPMENT–CITY PROPERTY: A communication from G. Michael Pace, Jr., Attorney, representing SunCom, advising that at its meeting on Tuesday, May 11, 2004, the Board of Zoning Appeals unanimously approved the granting of a special exception to allow SunCom to construct and operate a 110-foot flagpole communication facility and related equipment on a portion of the Roanoke Civic Center property, was before Council.

He requested that Council schedule the matter for public hearing on Monday, June 7, 2004, at the Council's 2:00 p.m. session.

Mr. Dowe moved that Council concur in the request as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

(Mr. Pace later requested that the public hearing be held on Monday, July 19, 2004, at 7:00 p.m., or as soon thereafter as the matter may be heard by the Council.)

ELECTIONS-CITY COUNCIL: A communication from Carl T. Tinsley, Sr., Secretary, Roanoke City Electoral Board, transmitting, pursuant to Section 24.2-675, Code of Virginia, 1950, as amended, the following certified copy of the Abstracts of Votes cast in the General Election in the City of Roanoke for the Office of Mayor and City Council, held on Tuesday, May 4, 2004, was before the body.

(PARTIAL BLANK PAGE)

ABSTRACT OF VOTES

cast in the City of ROANOKE, Virginia,
at the May 4, 2004 General Election, for:

MAYOR

| <i>NAMES OF CANDIDATES AS PRINTED ON BALLOT</i> | <i>TOTAL VOTES RECEIVED (IN FIGURES)</i> |
|---|--|
| <u>Alice P. Hincker</u> | <u>4,033</u> |
| <u>C. Nelson Harris</u> | <u>4,982</u> |
| <u>Delvis O. "Mac" McCadden</u> | <u>4,244</u> |
| <u>George A. Sgouros</u> | <u>111</u> |
| | |
| | |

Total Write-In Votes

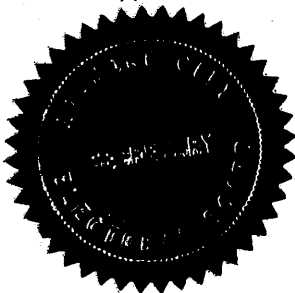
[Valid Write-Ins + Invalid Write-Ins = Total Write-In Votes] 0

We, the undersigned Electoral Board, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on May 4, 2004, do hereby certify that the above is a true and correct Abstract of Votes cast at said election and do, therefore, determine and declare that the following person has received the greatest number of votes cast for the above office in said election:

C. Nelson Harris

Given under our hands this 6th day of May, 2004.

A copy teste:



[Signature] Chairman
[Signature] Vice Chairman
[Signature] Secretary
[Signature] Secretary, Electoral Board

ABSTRACT OF VOTES

cast in the City of ROANOKE, Virginia,
at the May 4, 2004 General Election, for:

**MEMBER
CITY COUNCIL**

AT LARGE

ENTER AT LARGE OR APPROPRIATE DISTRICT OR WARD NAME

| <small>NAMES OF CANDIDATES AS PRINTED ON BALLOT</small> | <small>TOTAL VOTES RECEIVED (IN FIGURES)</small> |
|---|--|
| <u>Wendy J. Jones</u> | <u>6,071</u> |
| <u>Beverly T. Fitzpatrick, Jr.</u> | <u>7,486</u> |
| <u>Sherman P. Lea</u> | <u>6,889</u> |
| <u>Brian J. Wishneff</u> | <u>6,623</u> |
| <u>William H. "Bill" Carder</u> | <u>4,296</u> |
| <u>E. Duane Howard</u> | <u>817</u> |
| <u>Angela Mays Norman</u> | <u>2,849</u> |

Total Write-In Votes

[Valid Write-Ins + Invalid Write-Ins = Total Write-In Votes] 2

We, the undersigned Electoral Board, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on May 4, 2004, do hereby certify that the above is a true and correct Abstract of Votes cast at said election and do, therefore, determine and declare that the following person(s) has (have) received the greatest number of votes cast for the above office in said election:

Beverly T. Fitzpatrick Sherman P. Lea Brian J. Wishneff

Given under our hands this 5th day of May, 2004.

A copy teste:



[Signature] Chairman
[Signature] Vice Chairman
[Signature] Secretary
[Signature] Secretary, Electoral Board

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COMPLETE THIS FORM ONLY IF (i) TOTAL NUMBER OF WRITE-INS IS 5% OR MORE OF THE TOTAL NUMBER OF VOTES CAST FOR OFFICE OR (ii) A WRITE-IN CANDIDATE WAS ELECTED TO THE OFFICE.

WRITE-INS CERTIFICATION

ROANOKE

☐ TOWN/COUNTY☒ CITY

CITY COUNCIL

OFFICE TITLE

AT LARGE

DISTRICT NAME OR NUMBER, IF APPLICABLE

☒ General ☐ Special Election

May 4, 2004

Page 1 of 1

TOTAL VOTES
RECEIVED
(IN FIGURES)

WRITE-INS - SUMMARY

| | |
|---|---------------------|
| 1. Invalid Write-Ins | 0 |
| | ENTER TOTAL INVALID |
| 2. Valid Write-Ins | 2 |
| | ENTER TOTAL VALID |
| 3. Total Write-Ins | 2 |
| [ENTER THIS FIGURE ON LINE FOR TOTAL WRITE-IN VOTES ON ABSTRACT FOR THIS OFFICE.] | |
| | ADD LINES 1 AND 2 |

VALID WRITE-INS - DETAIL

LIST VALID WRITE-INS IN ALPHABETICAL ORDER BELOW AND ON CONTINUATION PAGES, AS NEEDED. ALL VALID WRITE-INS WHEN ADDED TOGETHER MUST EQUAL TOTAL ENTERED ON LINE 2 ABOVE.

TOTAL VOTES
RECEIVED
(IN FIGURES)

| | |
|--------------------|---|
| Chris Chitum | 2 |
| | |
| | |
| | |

CONTINUED ON PAGES ____ THROUGH ____

We, the undersigned Electoral Board, upon examination of the official records deposited with the Clerk of the Circuit Court of the election held on May 4, 2004, do hereby certify that, with the continuation pages indicated, the above is a true and correct certification of the write-in votes cast at said election for the office indicated above.

Given under our hands this 5th day of May, 2004.

A copy tests:



[Signature] Chairman
[Signature] Vice Chairman
[Signature] Secretary
[Signature] Secretary, Electoral Board

Mr. Dowe moved that the Abstracts of Votes be received and filed. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

PURCHASE/SALE OF PROPERTY-CITY COUNCIL: A communication from the City Manager requesting that Council meet in Closed Session to discuss acquisition of real property for a public purpose, where discussion in open meeting would adversely affect the bargaining position of negotiating strategy of the City, pursuant to Section 2.2-3711 (A)(3), Code of Virginia, (1950), as amended, was before body.

Mr. Dowe moved that Council concur in the request of the City Manager to convene in Closed Session as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

OATHS OF OFFICES-COMMITTEES-INDUSTRIES-WATER RESOURCES: A report of qualification of the following persons, was before Council:

M. Rupert Cutler as a City representative to the Board of Directors, Western Virginia Water Authority, for a term commencing March 2, 2004 and ending March 1, 2006; and

Randy L. Leftwich as a member of the Human Services Committee for a term ending June 30, 2004.

Mr. Dowe moved that the report of qualification be received and filed. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

CITY COUNCIL: A communication from the City Manager requesting that Council convene in a Closed Meeting to discuss award of a public contract involving the expenditure of public funds, and discussion of the terms or scope of such contract, where discussion in open meeting would adversely affect the bargaining position or negotiating strategy of the public body, pursuant to Section 2.2-3711(A)(3), Code of Virginia (1950), as amended, was before the body.

Mr. Dowe moved that Council concur in the request of the City Manager to convene in Closed Session as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

CITY COUNCIL: A communication from the City Attorney requesting that Council convene in a Closed Meeting to consult with legal counsel on a specific legal matter requiring the provision of legal advice by such counsel, pursuant to Section 2.2-3711(A)(7), Code of Virginia (1950), as amended, was before the body.

Mr. Dowe moved that Council concur in the request of the City Attorney to convene in Closed Session as above described. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

REGULAR AGENDA

PUBLIC HEARINGS: NONE.

PETITIONS AND COMMUNICATIONS: NONE.

REPORTS OF OFFICERS:

CITY MANAGER:

BRIEFINGS: NONE.

ITEMS RECOMMENDED FOR ACTION:

BUDGET-CLERK OF CIRCUIT COURT-STATE COMPENSATION BOARD: A communication from the Clerk of the Circuit Court advising that the Clerk is responsible, by statute, for recordation of legal instruments which include land records, marriage licenses, financing statements, assumed names, wills and other probate records, and Law, Chancery and Criminal orders, all of which must be maintained and available to the general public, was before Council.

The Clerk further advised that the Compensation Board, through the Technology Trust Fund, has made funds available to be allocated toward contractual obligations for those officers that have indicated that funds are needed; the Circuit Court Clerk's Office for the City of Roanoke has been allocated for reimbursement funds totaling \$21,708.00 for charges by the Supreme Court of Virginia for its indexing and scanning system and \$8,000.00 for purchase of new printers for use with the system; and acceptance of the funds is vital to the Circuit Court Clerk's Office in meeting year end budget obligations.

The Clerk of Circuit Court recommended that Council accept funding from the Compensation Board Technology Trust Fund, in the amount of \$29,708.00, that Council establish a revenue estimate in the General Fund in the amount of \$29,708.00, and appropriate same to the following accounts:

Maintenance Contracts Account No. 001-120-2005 - \$21,708.00
Fees for Professional Services Account No. 001-12-2111-2010
\$8,000.00

A communication from the City Manager recommending that Council concur in the request, was also before the body.

Mr. Dowe offered the following ordinance:

(#36696-052004) AN ORDINANCE to appropriate funding for an indexing and scanning system for the Clerk of the Circuit Court and establish revenue provided by the Compensation Board, amending and reordaining certain sections of the 2003-2004 General Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of ordinance, see Ordinance Book No. 68, Page 475.)

Mr. Dowe moved the adoption of Ordinance No. 36696-052004. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

CITY CODE-TAXICABS AND FOR HIRE VEHICLES: The City Manager submitted a communication advising that during the March 15, 2004, Council meeting, Yellow Cab Services of Roanoke, Inc., submitted a petition requesting an adjustment of rates for taxicab service and for-hire automobiles in the City of Roanoke, which rates are regulated by Council, pursuant to Section 34-130, Code of the City of Roanoke (1979), as amended; and taxicab service in Roanoke is provided by Yellow Cab, Liberty Cab Company, Northwest Cab Company, and Quality Taxi Company.

It was further advised that the present request of Yellow Cab represents the first request for an increase in almost four years (the last increase was adopted by Council on June 5, 2000); the request is based on continued and significant increases in the cost of doing business (insurance rates up over 35 per cent, repair costs up over 25 per cent, fuel costs up over 30 per cent and labor costs up over 20 per cent), and the proposed increase would help offset current expenses for taxicab companies.

It was explained that the requested increase is for the initial meter drop rate to be raised from \$1.80 for the first 1/8th mile to \$2.80 for the first 1/8th mile, and no other rate increases are requested; the average taxicab trip in Roanoke is three miles, or \$6.40; under the new proposal, the average increase in fare will be \$1.00 per trip, or an increase of 15.6 per cent; and per the petitioner, the proposed increase in rates is in line with those proposed, or in effect, in major cities in the Commonwealth of Virginia.

It was noted that City staff, along with the City Attorney's Office, conducted a survey among other Virginia municipalities to determine their practices with respect to regulating taxicabs, specifically the regulation of rates; in addition, calculations were made to compare the cost of a three mile trip in Roanoke under the new rate (\$7.40) to the cost of the same trip in the seven localities surveyed; although Roanoke's charge was the highest, it was still in line with what other localities are charging; however, Roanoke's cab companies do not levy extra charges for such services as transporting packages, groceries, luggage, or for providing night service; and many cities and counties allow these and other additional charges.

The City Manager recommended that Council amend Section 34-130 (g), Code of the City of Roanoke (1979), as amended, to reflect an increase in the "distance rate" for a taxi trip from \$1.80 to \$2.80 for the first 1/8th mile or fraction thereof.

Mr. Cutler offered the following ordinance:

(#36697-052004) AN ORDINANCE amending subsection (g) of §34-130, Rate Schedule, of Division IV, Fares, Article III, Public Vehicles (Taxicabs and For Hire Vehicles), of the Code of the City of Roanoke (1979), as amended, in order to adjust certain rates charged for services rendered by taxicabs and fore-hire automobiles; and dispensing with the second reading by title paragraph of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68, Page 476.)

Mr. Cutler moved the adoption of Ordinance No. 36697-052004. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

BUDGET-ROANOKE PASSENGER STATION RENOVATION PROJECT: The City Manager submitted a communication advising that the Western Virginia Foundation for the Arts and Sciences (WVFAS) received notification in November, 2003 that its application for Transportation Enhancement funds through the Transportation Equity Act for the 21st Century (TEA-21) for the Roanoke Passenger Station Renovation Project was approved, in the amount of \$110,000.00; this amount is in addition to the \$988,000.00 in Enhancement funds approved in 2001 and 2002, bringing the total to \$1,098,000.00; other State-provided funding of \$500,000.00 has also been committed to the project which currently totals almost \$3.1 million, considering both State and local funding; the City of Roanoke must enter into separate supplemental agreements with the WVFAS and the Virginia Department of Transportation (VDOT), which define the responsibilities of each party; authority for all such VDOT agreements for the project was previously authorized by action of Council on January 22, 2002 (Resolution No. 35734-012202); authority for all such WVFAS agreements for the project was previously provided through Ordinance No. 36157-121602; the WVFAS will be responsible for the match requirement of \$27,500.00; and \$110,000.00 of TEA-21 Enhancement funds need to be appropriated (to be reimbursed by VDOT) to Project Account No. 008-530-9900-9007 for disbursement to the Western Virginia Foundation for the Arts and Services.

The City Manager recommended that Council appropriate \$110,000.00 of TEA-21 Enhancement funds to be funded by VDOT to Project Account No. 008-530-9900-9007 for disbursement to the Western Virginia Foundation for the Arts and Science, and establish a revenue estimate in the same amount for State reimbursement through the TEA-21 program.

Mr. Fitzpatrick offered the following ordinance:

(#36698-052004) AN ORDINANCE to appropriate funding from the Commonwealth for Roanoke Passenger Station Renovation project, amending and reordaining certain sections of the 2003-2004 Capital Projects Fund Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68, Page 477.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36698-052004. The motion was seconded by Mr. Harris.

Council Member Dowe and Mayor Smith advised that they serve on the Board of Directors of the Western Virginia Foundation for the Arts and Sciences; whereupon, the City Attorney stated that due to certain Federal requirements, they must abstain from voting on the ordinance.

Ordinance No. 36698-052004 was adopted by the following vote:

AYES: Council Members Cutler, Harris, Fitzpatrick, Wyatt, and Bestpitch-----5.

NAYS: None-----0.

(Mayor Smith and Council Member Dowe abstained from voting.)

BUDGET-TOTAL ACTION AGAINST POVERTY-GRANTS-JUVENILE CORRECTIONAL FACILITIES: The City Manager submitted a communication advising that the Department of Criminal Justice Services notified the City of Roanoke and Roanoke County of an allocation of funds under the Juvenile Accountability Block Grant Program of \$48,493.00 in Federal funds; and a joint local match of \$5,388.00 is required.

It was further advised that the allocation formula provides \$32,473.00 Federal, \$3,608.00 match for the City of Roanoke, \$16,020.00 Federal and \$1,780.00 match for Roanoke County; staff from the jurisdictions have met and developed program proposals for use of the funding; Roanoke County will provide a substance abuse intervention education program through the schools; the City of Roanoke, in collaboration with the Boys and Girls Club and Total Action Against Poverty, will provide services to students suspended or otherwise absent from school during the day; TAP Project Discovery will help adjudicated youth avoid negative risks and unproductive lifestyles that often correlate with dropping out of school; funding for the City's match of \$3,608.00 is in Account No. 001-630-1270-2010, Human Services Support; and the City of Roanoke will serve as the fiscal agent for the funds.

The City Manager recommended that she or her designee, be authorized to accept the \$48,493.00 JABG grant allocated to the City of Roanoke for \$32,473.00 and to Roanoke County for \$16,020.00, and execute the agreement with the Department of Criminal Justice Services for said funds; and that Council appropriate \$53,881.00 and increase the corresponding revenue estimates of \$48,493.00 in Federal funds and \$1,780.00 in Roanoke County matching funds in accounts to be established by the Director of Finance in the Grant Fund and transfer \$3,608.00 from Human Services Support, Account No. 001-630-1270-2010, to the above established Grant Fund.

Mr. Dowe offered the following ordinance:

(#36699-052004) AN ORDINANCE to appropriate funding from the Juvenile Accountability Block Grant Program and local match for juvenile education programs, amending and reordaining certain sections of the 2003-2004 General and Grant Funds Appropriations, and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68, Page 478.)

Mr. Dowe moved the adoption of Ordinance No. 36699-052004. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

Mr. Dowe offered the following resolution:

(#36700-052004) A RESOLUTION authorizing acceptance of a Juvenile Accountability Incentive Block Grant from the Virginia Department of Criminal Justice Services on behalf of the City, authorizing execution of any and all necessary documents to comply with the terms and conditions of the grant and applicable laws, regulations, and requirements pertaining thereto.

(For full text of Resolution, see Resolution Book No. 68, Page 480.)

Mr. Dowe moved the adoption of Resolution No. 36700-052004. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

REPORTS OF COMMITTEES:

BUDGET-SCHOOLS: A communication from the Roanoke City School Board requesting that Council approve the following appropriations, was before the body.

- \$394,363.00 from the 2003-2004 Capital Maintenance and Equipment Replacement Fund to provide for replacement of facility maintenance site requests, purchase of a mowing tractor, and roof repairs;
- \$75,000.00 for the Alternative Education Program to provide alternative curriculum and training for high risk students at Taylor Learning Academy, with a focus on improving the total self-concept of the student, which is a continuing program and the appropriation represents an increase of funds based on final program activities.

The Director of Finance recommended that Council concur in the request of the School Board.

Mr. Harris offered the following ordinance:

(#36701-052004) AN ORDINANCE to appropriate funding for equipment from the Capital Maintenance and Equipment Replacement Program (CMERP), amending and reordaining certain sections of the 2003-2004 School Funds Appropriations and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68, Page 481.)

Mr. Harris moved the adoption of Ordinance No. 36701-052004. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch and Mayor Smith-----7.

NAYS: None-----0.

UNFINISHED BUSINESS: NONE.

INTRODUCTION AND CONSIDERATION OF ORDINANCES AND RESOLUTIONS: NONE.

MOTIONS AND MISCELLANEOUS BUSINESS:

INQUIRIES AND/OR COMMENTS BY THE MAYOR, VICE-MAYOR AND MEMBERS OF CITY COUNCIL:

CITY COUNCIL-REGIONAL COOPERATION: Council Member Cutler called attention to an article in a recent issue of *Virginia Town and City* in regard to mutual aid pacts, which noted that the City of Roanoke, City of Salem, Town of Vinton and Roanoke County have moved beyond maintaining a mutual aid agreement and expanded regional cooperation by establishing a regional radio system, standardizing equipment for fire fighting components, adopting a valley-wide incident management system and participating in the construction of the Roanoke Valley Regional Fire Emergency Medical Services Training Center. He stated that the article was a positive reflection of the efforts by Roanoke Valley jurisdictions toward regional cooperation.

CITY COUNCIL-RAIL SERVICE: Council Member Cutler advised that the Governor will appoint a Commission on Rail Enhancement for the 21st Century which will address improving freight service along I-81, and it is hoped that a representative from the Greater Roanoke region will be appointed to the Commission.

CITY COUNCIL: Council Member Bestpitch commented on the Roanoke Valley Leadership Trip to Louisville, Kentucky, which was held on May 16-18, 2004. He advised that the value of the trip will be in determining whether localities of the Roanoke Valley can build upon the kinds of regional cooperation as above referenced by Dr. Cutler, in order to achieve greater efficiencies in government; i.e.: cooperative agreements relating to fire/emergency medical services, library systems, and parks and recreation activities, etc.

CITY COUNCIL-COALITION OF LOCAL GOVERNMENT OFFICIALS: Council Member Bestpitch advised that along with the City Manager, he represents the City of Roanoke on the Virginia First Cities Coalition which consists of the City of Roanoke and 14 other cities throughout the Commonwealth of Virginia that experience the same challenges of older urban core cities. He stated that a meeting was held on Wednesday, May 19, 2004, in Petersburg, Virginia, and commended the City Manager for the leadership role she has provided to the organization, she has represented the City of Roanoke well and is highly respected by City Managers and elected representatives from the 14 other cities that comprise the Coalition. He encouraged Council to continue its support of the Virginia First Cities Coalition.

HEARING OF CITIZENS UPON PUBLIC MATTERS: The Mayor advised that Council sets this time as a priority for citizens to be heard and matters requiring referral to the City Manager will be referred immediately for any necessary and appropriate response, recommendation or report to Council.

COMPLAINTS-CITY COUNCIL-SCHOOLS: Dr. E. Jeanette Manns, 1826 10th Street, N. W., spoke with regard to an incident that occurred in a City school in which her grandson was the victim of bullying by another student. She expressed concern with regard to the manner in which School officials responded to the incident, and advised that racism exists in Roanoke City Public Schools and in Roanoke City employment.

TAXICABS AND FOR HIRE VEHICLES-COMPLAINTS-COMMISSIONER OF THE REVENUE: Mr. Chris Craft, 1501 East Gate Avenue, N. E., expressed appreciation for approval by Council of an increase in taxicab rates. He expressed concern that, for budgetary reasons, an employee of the Commissioner of the Revenue's Office is no longer assigned the responsibility of issuing City decals at the Division of Motor Vehicles office at Crossroads Mall.

CITY MANAGER COMMENTS: NONE.

At 2:50 p.m., the Mayor declared the Council meeting in recess for one Closed Session.

Council Member Dowe left the meeting.

At 3:35 p.m., the meeting reconvened in the Council Chamber, with all Members of the Council in attendance, except Council Member Dowe, Mayor Smith presiding.

COUNCIL: With respect to the Closed Meeting just concluded, Mr. Cutler moved that each Member of City Council certify to the best of his or her knowledge that: (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and (2) only such public business matters as were identified in any motion by which any Closed Meeting was convened were heard, discussed or considered by City Council. The motion was seconded by Mr. Fitzpatrick and adopted by the following vote:

AYES: Council Members Cutler, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Dowe was absent.)

ROANOKE CIVIC CENTER: The City Manager presented a communication advising that in May, 2001, Council authorized City officials to enter into a License Agreement with Arena Ventures, LLC, that provided for use of the Roanoke Civic Center Coliseum and certain related Civic Center facilities by Arena Ventures, to provide a certain number of National Basketball Development League games and a certain number of entertainment events produced by SFX Concerts, Inc., in the Coliseum over a five year period, which agreement was entered into on May 18, 2001; Section 14.2 (b) of the agreement provides Arena Ventures with the right to terminate the agreement if average paid attendance at regular season NBDL League Games is less than 4,500 in any League season ending prior to June 1, 2004; and the agreement further requires Arena Ventures to provide the City with written notice no later than May 31, 2004, should Arena Ventures decide to exercise this provision.

It was further advised that the attendance threshold as above stated has not been met for any of the NBDL's regular season league games for the past three seasons; accordingly, Arena Ventures now has the right to terminate the agreement; Arena Ventures has indicated to City staff a positive and clear interest in staying in Roanoke for the remainder of the term of the agreement, but seeks some consideration for renegotiation of the agreement without the pressure of the May 31, 2004 deadline; Arena Ventures has indicated that it is making similar efforts to seek renegotiation of its agreements with other localities, although the deadline varies with each locality; and Arena Ventures has requested an extension of the May 31, 2004 deadline by which it must give notice that it intends to exercise this provision by one month, in order to have more time to discuss renegotiation of the agreement with City staff.

The City Manager recommended that she be authorized to execute an amendment to the agreement with Arena Ventures, LLC, extending the May 31, 2004, deadline by which Arena Ventures must provide the City with written notice that it is terminating the agreement, pursuant to Section 14.2(b), until June 30, 2004, with all documents to be upon form approved by the City Attorney.

Mr. Fitzpatrick offered the following ordinance:

(#36702-052004) AN ORDINANCE authorizing the City Manager to execute an amendment to the License Agreement dated May 18, 2001, between the City and Arena Ventures, LLC, extending the date by which Arena Ventures must provide written notice to the City that it is exercising its right to terminate such License Agreement from May 31, 2004 until June 30, 2004, upon certain terms and conditions; and dispensing with the second reading of this ordinance by title.

(For full text of Ordinance, see Ordinance Book No. 68, Page 482.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36702-052004. The motion was seconded by Mr. Harris and adopted by the following vote:

AYES: Council Members Cutler, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Dowe was absent.)

At 3:35 p.m., the Mayor declared the Council meeting in recess for a continuation of the Closed Sessions which were previously approved by Council.

At 5:25 p.m., the meeting reconvened in the Council Chamber, with all Members of the Council in attendance, except Council Member Dowe, Mayor Smith presiding.

COUNCIL: With respect to the Closed Meeting just concluded, Mr. Bestpitch moved that each Member of City Council certify to the best of his or her knowledge that: (1) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act; and (2) only such public business matters as were identified in any motion by which any Closed Meeting was convened were heard, discussed or considered by City Council. The motion was seconded by Mr. Cutler and adopted by the following vote:

AYES: Council Members Cutler, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----6.

NAYS: None-----0.

(Council Member Dowe was absent.)

At 5:30 p.m., the Mayor declared the Council meeting in recess until 7:00 p.m., in the City Council Chamber.

At 7:00 p.m., on Thursday, May 20, 2004, the Council meeting reconvened in the City Council Chamber, fourth floor, Noel C. Taylor Municipal Building, 215 Church Avenue, S. W., City of Roanoke, Virginia, with Mayor Ralph K. Smith presiding.

PRESENT: Council Members M. Rupert Cutler, Alfred T. Dowe, Jr., C. Nelson Harris, Beverly T. Fitzpatrick, Jr., Linda F. Wyatt, William D. Bestpitch, and Ralph K. Smith-----7.

ABSENT: None-----0.

OFFICERS PRESENT: Darlene L. Burcham, City Manager; William M. Hackworth, City Attorney; Jesse A. Hall, Director of Finance; and Mary F. Parker, City Clerk.

The meeting was opened with prayer by Council Member Bestpitch.

The Pledge of Allegiance to the Flag of the United States of America was led by Mayor Smith.

PRESENTATIONS AND ACKNOWLEDGEMENTS: NONE.

PUBLIC HEARINGS:

ZONING: Pursuant to Resolution No. 25523 adopted by the Council on Monday, April 6, 1981, the City Clerk having advertised a public hearing for Thursday, May 20, 2004, at 7:00 p.m., or as soon thereafter as the matter may be heard, on a request of Fudds of S. W. VA., Inc., that property located at 3659 Orange Avenue, N. E., Official Tax No. 7110122, be rezoned from RS-3, Residential Single Family District, to C-2 General Commercial District, subject to certain conditions proffered by the petitioner, the matter was before Council.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Monday, May 3, 2004 and Monday, May 10, 2004.

The City Planning Commission submitted a written report advising that the petition for zoning requests that 3.13 acres, containing approximately 300 feet of frontage on Orange Avenue and a depth of almost 540 feet, be rezoned to C-2, General Commercial District, with a proffered condition that prohibits 15 delineated C-2 uses; although the petition states that the request is "for the purpose of permitting a restaurant on the property," the petition's proffered condition does not limit development of the parcel of land to a restaurant use; and because a concept plan is not proffered, neither the restaurant "delineation" nor the footprint of the building in terms of size or location as delineated on the concept plan are proffered.

The following factors underscore the significance of the subject site:

- The site's location at a major gateway to the City and its proximity to the entrance to the Roanoke Centre for Industry and Technology (RCIT);
- The site's 3.13-acre size and its potential for accommodating multiple uses, structures, signage, and curb cuts; and
- The limited opportunity within the City for development of a property that represents both significant size and a location along a major gateway.

It was further advised that given the significance of the subject site and the potential impact of its development as a C-2 property, there are concerns with potential use(s) of the property that would be permitted if the rezoning request were approved in its current form; the Fifth Amendment Petition proffers that 15 permitted C-2 uses would be prohibited on the property; the C-2 District permits 36 other uses by right (including highway convenience stores, open air markets, and automobile cleaning facilities) and 11 special exception uses; and without additional proffers which refine their development as to intensity, traffic generation and circulation, curb cuts, and streetscape, certain C-2 uses permitted within the parameters of the current form of the petition could be inappropriate on the site.

It was explained that although the Fifth Amended Petition lengthens the list of C-2 uses that would be prohibited on the property, the petition has established no site development parameters within which the property could be developed if the rezoning request in its current form were approved; and in order to assess consistency of the proposal with *Vision 2001-2020* site development principles, the following issues should be addressed as a condition of the rezoning:

- Number and location of curb cuts and shared access
- More definition within the petition to assess, the consistency of the request with *Vision 2001-2020's* policies of minimizing curb cuts and taking advantage of opportunities to share points of access on a multiple use, multiple structure parcel; Justification of more than one curb cut from a functional standpoint given that no median break on Orange Avenue would be permitted in this location because of the proximity to the Mexico Way/Blue Hills traffic signal.

- Freestanding signage
- C-2 sign regulations would permit a total sign allocation for the property, both attached and freestanding, of up to 848.5 square feet of sign area; and
- Up to three freestanding sign structures on the property would be permitted, which structures could include a total of four signs, with up to a total of 249 square feet of sign area;
- Relationship of a building or buildings to Orange Avenue in terms of defining the streetscape, particularly in regard to the setback of any building and the amount of pavement that separates any building from Orange Avenue;
- Landscaping, specifically in terms of preserving and replacing tree canopy; and
- Designation and planting of the required landscape buffer along the subject property's southern and eastern boundaries which abut a residentially zoned parcel.

It was advised that given the significance of the property, both its location and size, a change in zoning district designation that would permit C-2 development of the site should be deemed appropriate only if the proposed development is found to be consistent with *Vision 2001-2020's* policy regarding the creation of commercial centers rather than strip development; and the petition, in its current form, is seriously deficient in providing definition that allows an assessment of the consistency of the request with the following policies and principles of *Vision 2001-2020*:

- Commercial development should be concentrated at key intersections. Curb cuts should be minimized.
- Encourage maximum use of commercial and industrial sites by addressing setbacks, lot coverage, parking requirements, and landscaping to encourage development of commercial businesses in centers versus strip developments.

- A continued comprehensive emphasis on city design will improve Roanoke's attractiveness for new commercial and residential development and strengthen individual neighborhoods.
- Buildings and trees should shape the City's image rather than asphalt and signs.
- Building location and design should be considered as important elements of the streetscape and should be used to define the street corridor as a public place.
- Parking: Roanoke will discourage excessive surface parking lots, off-street parking will be encouraged to the side or rear of buildings.
- Commercial centers
- Maximize site development through reduced parking spaces, increased lot coverage, and parcels developed along street frontages.
- Parking lots should have trees located in the interior of the site and along street frontages.
- Curb cuts should be minimized; shared parking lots should be encouraged.
- Signs should be limited in number and scaled in size to minimize visual clutter.

It was noted that the concept plan of the petition and the lack of definition of site development in the form of proffered conditions raise serious questions about the site being developed in a manner that is consistent with *Vision 2001-2020*, particularly with regard to commercial development along major corridors and at gateways to the City; and the current form of the petition, if approved, could result in land uses and site development that would permit a continuation of a strip commercial pattern of development on the site that would be inconsistent with *Vision 2001-2020*.

The City Planning Commission advised that without a clearer definition of the proposed development in terms of use and site development that would allow for an assessment of the consistency of the proposal with *Vision 2001-2020*, it is recommended that Council deny the request for rezoning.

Mr. Dowe offered the following ordinance:

"AN ORDINANCE to amend §36.1-3, Code of the City of Roanoke (1979), as amended, and Sheet No. 711, Sectional 1976 Zone Map, City of Roanoke, to rezone certain property within the City, subject to certain conditions proffered by the applicant; and dispensing with the second reading of this ordinance by title."

Mr. Dowe moved the adoption of the above referenced ordinance. The motion was seconded by Mr. Harris.

Maryellen F. Goodlatte, Attorney, representing the petitioner, advised that Fudds of S. W. VA., Inc. (Fudds), owns three acres of land on Route 460 which are close to the Roanoke County line and zoned RS-3, with the exception of a small "dog leg" adjacent to the property that is part of a larger tract of land owned by Parkway Wesleyan Church; all properties adjoining the property in question on both sides of Route 460 are zoned commercial; and Fudds wishes to rezone the property to C-2, General Commercial District, in order to construct and operate a Fuddrucker's Restaurant. She further advised that because the site consists of slightly more than three acres, the owner would like to place a complimentary use on the property as well once the restaurant is operational; however, at this point, the owner does not know what the use will consist of, but recognizing that there are certain C-2 uses that would not be appropriate for the site, the petitioner has proffered approximately 15 uses which are listed on the petition for rezoning. To help allay any concerns over what might go on the site, she stated that Fudds has offered to add an additional proffer that the first use to be developed on the property will be a restaurant; there is no question that commercial zoning is appropriate, given the nature of development along Route 460; Fudds wishes to invest in the property and believes that a Fuddrucker's Restaurant will be well received by persons who travel, live and work along the Route 460 corridor; the concept plan is consistent with existing development patterns along Route 460; in an existing commercial area like Orange Avenue/Route 460, the experience of Fudds has been that customers will not come to a restaurant that does not offer convenient, visible and accessible parking; the focus on building placement and parking issues resulted in Fudds requesting a continuation of the matter while it considered whether or not to proceed; the bottom line for Fudds is that the company cannot invest in the property if the restaurant is required to be placed on the site in such a way that the business will be unsuccessful; and by proffering certain uses, Fudds believes that the restaurant will be a good fit

among Route 460 neighbors, some of which are currently zoned conditional C-2 and some unconditional C-2. She stated that her client is not insensitive to many of the issues raised by City Planning staff; i.e.: plans include only one free standing sign and Fudds will work with the City to minimize curb cuts so long as the curb cuts accommodate future additional use(s). She advised that the City Planning Commission has recommended that Council deny the request for rezoning; however, to deny the rezoning and to keep the site residential does not make sense, because Orange Avenue is a mature commercial boulevard with commercial and not residential uses as its future; and it should be noted that no citizen objected to the request for rezoning.

On behalf of her client, Ms. Goodlatte requested that Council approve the request for rezoning and advised that her client is willing to submit additional proffers if such is the desire of the Council.

The Mayor inquired if there were persons present who would like to be heard in connection with the public hearing.

Mr. Chris Craft, 1501 East Gate Avenue, N. E., spoke in support of the request for rezoning, the effect of which will be to add another new business to the City of Roanoke, employ between 50 - 75 persons, and generate additional tax dollars to the City. He stated that adequate parking is available and asked that Council work with the Fudds regarding additional proffers.

Mr. Bill Tanger, 257 Dancing Tree Lane, Roanoke County, spoke in support of the request for rezoning under the general proffers that are currently proposed. He stated that concern by City Planning staff is an early application of a new zoning effort that is underway in the City; however, the location in question is an inappropriate place to begin; setbacks and the building orientation does not make sense in this section of the City; and concerns raised by City Planning staff relate to the City's Comprehensive Plan, Council has the authority to amend the Comprehensive Plan, and is encouraged to do so.

There being no further speakers, the Mayor declared the public hearing closed.

Council Member Bestpitch offered a substitute motion that the matter be referred back to City Planning staff to review additional proffers and report to Council no later than the regular meeting on Monday, June 21, 2004. The motion was seconded by Mr. Cutler.

Following further discussion, the Agent to the City Planning Commission was requested to respond to the rationale of the Planning Commission in recommending a denial of the request for rezoning; whereupon, he advised that the issue of turning the building sideways was not a requirement of City Planning staff; however, staff was concerned about the amount of parking between the building and the street, which then led to the location of the front door because of the desire of the petitioner to have at least a majority of the parking in proximity to the front door. He called attention to the Western Sizzlin Restaurant which is located immediately across the roadway where all but five parking spaces are to the right of the building, the front door is to the side of the building, and it is a successful operation. With regard to curb cuts, he advised that there are no median breaks on Orange Avenue in proximity to the site and to have two curb cuts would further complicate the traffic issue; and no specific site development proffers are included in the current petition for rezoning. He advised that City Planning staff will work with the petitioner to address the parking issue and present a complete package to Council as to what will ultimately be developed on the site.

Following further discussion in which it was noted by several Members of Council that the subject of additional proffers should be addressed by the attorney for the petitioner and City Planning staff and not on the Council floor, the substitute motion was unanimously adopted.

TAXES-RADAR: Pursuant to instructions by the Council, the City Clerk having advertised a public hearing for Thursday, May 20, 2004, at 7:00 p.m., or as soon thereafter as the matter may be heard, on a request of Unified Human Services Transportation System, Inc. (RADAR), for exemption from local real estate taxation of real property located between Breckinridge Avenue and Baker Avenue, N. W., the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Friday, May 14, 2004.

The City Manager submitted a communication advising that Unified Human Services Transportation Systems, Inc., which transacts business as RADAR, owns property known as Official Tax Nos. 2510106-2510117, inclusive, located between Breckinridge Avenue and Baker Avenue, N. W.; the primary purpose of RADAR is to provide an efficient and cost-effective transportation system for the elderly, disabled, indigent, and other persons who may require the provision of specialized transportation; and annual taxes due for fiscal year 2004-2005 are \$296.44 on an assessed value of \$24,500.00.

It was further advised that on May 19, 2003, Council approved a revised policy and procedure in connection with requests from non-profit organizations for tax exemption of certain property in the City, pursuant to Resolution No. 36331-051903, which adopted the revised Process for Determination of Property Tax Exemption dated May 19, 2003, effective January 1, 2003; Unified Human Services Transportation Systems, Inc. (RADAR), provided the necessary information required as a result of adjustments made to the City's revised local policy prior to the deadline of April 15, 2004; and according to the Commissioner of the Revenue's Office, the loss of revenue to the City will be \$237.19 after a 20 per cent service charge, or \$59.25, is levied by the City in lieu of real estate taxes.

It was explained that the Commissioner of the Revenue has determined that the organization is currently not exempt from paying real estate taxes by classification or designation under the Code of Virginia; and the IRS recognizes RADAR as a 501(c) 3 tax-exempt organization.

The City Manager recommended that Council approve the request of Unified Human Services Transportation Systems, Inc. (RADAR), for exemption from real estate property taxation, pursuant to Article X, Section 6(a)6, Constitution of Virginia, effective July 1, 2004, if the organization agrees to pay the subject service charge by that date.

Mr. Dowe offered the following ordinance:

(#36703-052004) AN ORDINANCE exempting from real estate taxation certain property of the Unified Human Services Transportation System, Inc. (RADAR), located in the City of Roanoke, an organization devoted exclusively to charitable or benevolent purposes on a non-profit basis; providing for an effective date; and dispensing with the second reading by title of this ordinance.

(For full text of Ordinance, see Ordinance Book No. 68, Page 483.)

Mr. Dowe moved the adoption of Ordinance No. 36703-052004. The motion was seconded by Mr. Bestpitch.

The Mayor inquired if there were persons present who would like to be heard in connection with the matter. There being none, he declared the public hearing closed.

There being no discussion or comments by Council Members, Ordinance No. 36703-052004 was adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith -----7.

NAYS: None-----0.

CITY PROPERTY-COMMUNITY PLANNING-TELEPHONE EQUIPMENT:
Pursuant to instructions by the Council, the City Clerk having advertised a public hearing for Thursday, May 20, 2004, at 7:00 p.m., or as soon thereafter as the matter may be heard, on an Amendment of Vision 2001-2020, the City's Comprehensive Plan, to include the Wireless Telecommunications Policy, the matter was before the body.

Legal advertisement of the public hearing was published in *The Roanoke Times* on Monday, May 3, 2004, and Monday, May 10, 2004; and in *The Roanoke Tribune* on Thursday, May 13, 2004.

The City Planning Commission submitted a written report advising that the *Wireless Telecommunications Policy* was drafted to address the increasing demand for wireless telecommunications facilities by setting forth policies, principles, and intended achievements in regard to regulating wireless telecommunications facilities on both publicly and privately owned land; and recent court cases have underscored the importance of jurisdictions adopting a wireless telecommunications policy.

It was further advised that the *Wireless Telecommunications Policy* acknowledges the parameters of the regulation as set forth in the Telecommunications Act of 1966, while recognizing the Act's preservation of the City's zoning authority over the placement, construction, and modification of personal wireless service facilities; and the *Wireless Telecommunications Policy* sets the direction for specific standards and development regulations within the City's zoning ordinance for the development of wireless telecommunications facilities, such standards to provide a uniform approach toward analyzing and processing wireless telecommunications facilities requests from a land use perspective.

It was explained that the recommendations of the *Wireless Telecommunications Policy* are intended to accommodate the growing coverage and capacity needs of carriers, while preserving and minimizing the negative impact that wireless telecommunications towers have on the surrounding natural and built environments; and major recommendations of the *Wireless Telecommunications Policy* are to:

- Encourage collocation of antennas on existing towers, structures, and buildings and the use of stealth wireless telecommunications facilities through a streamlined approval process
- When necessitated, approve new towers that are low impact in terms of location, siting, height, and design by
- Establishing a hierarchy of categories of lands on which to construct wireless telecommunications towers
- Establishing guidelines for siting a wireless telecommunications tower on a property
- Requiring applicants to document justification for requested heights of towers
- Considering the mitigation of the visual impact of a tower through design elements such as the size, area, and bulk of the tower or other support structure, associated equipment enclosures, and the types of antenna and mounting techniques
- Take a regional approach by considering the potential impact of a proposed wireless telecommunications facility on surrounding jurisdictions as well as the City
- Establish a process and fee for utilizing a consultant to assist the City in evaluating the alternatives and potential impacts of a special exception request for a wireless telecommunications facility

- Develop uniform standards of visibility and impact within zoning regulations by which applications for wireless telecommunications facilities will be reviewed and evaluated *Vision 2001-2020* includes the following three general policies related to wireless telecommunications facilities:
- IN P6 Roanoke will facilitate development of the capacity and coverage of fiber-optic, cable, and wireless communications networks.
- IN P6 The visual impact of telecommunication facilities will be minimized by collocation and placement of towers in strategic locations.
- EC A11 Adopt zoning regulations that address communication towers to minimize their visual impact.

It was advised that the *Wireless Telecommunications Policy* is the next step in further refining the general policies of *Vision 2001-2020*; the *Wireless Telecommunications Policy* has more specific policies and actions for reviewing and evaluating requests for wireless telecommunications facilities within the City; and the *Wireless Telecommunications Policy* contains specific recommendations that should be implemented through update of the zoning ordinance.

The City Planning Commission recommended that Council adopt the *Wireless Telecommunications Policy* as an element of *Vision 2001-2020*, the City's Comprehensive Plan.

Mr. Fitzpatrick offered the following ordinance:

(#36704-052004) AN ORDINANCE approving the Wireless Telecommunications Policy, and amending Vision 2001-2020, the City's Comprehensive Plan, to include the Wireless Telecommunications Policy; and dispensing with the second reading of this ordinance by title.

(For full text of Ordinance, see Ordinance Book No. 68, Page 486.)

Mr. Fitzpatrick moved the adoption of Ordinance No. 36704-052004. The motion was seconded by Mr. Cutler.

The Mayor inquired if there were persons present who would like to be heard in connection with the matter. There being none; he declared the public hearing closed.

There being no discussion or comments by Council Members, Ordinance No. 36704-052004 was adopted by the following vote:

AYES: Council Members Cutler, Dowe, Fitzpatrick, Harris, Wyatt, Bestpitch, and Mayor Smith-----7.

NAYS: None-----0.

OTHER BUSINESS:

ARCHITECTURAL REVIEW BOARD: Edward A. Natt, Attorney, representing Rodney Tozier and Travis Tozier, d/b/a Community Properties, LLC, presented an appeal to a decision of the Architectural Review Board rendered on March 1, 2004, pursuant to Section 36.1-642(c) of the Code of the City of Roanoke (1979), as amended, with regard to property located at 365 Washington Avenue, S. W., which property is located in the H-2, Neighborhood Preservation District.

Mr. Natt advised that the former metal roof was in a state of disrepair and was replaced with asphalt shingles and the petitioner innocently replaced the roof on the structure without seeking a Certificate of Appropriateness from the Architectural Review Board. He stated that the Architectural Review Board denied the Certificate of Appropriateness; staff comments were that the petitioner replaced the roof prior to advising City staff, therefore, staff had no opportunity to assess the pre-existing condition of the roof; the petitioner submits that there was a definite and immediate need to replace the roof; and the replacement roof is appropriate in that it is similar to other roofs which have received a Certificate of Appropriateness from the Architectural Review Board.

In further explanation of the request, Mr. Natt advised that:

- His client did not seek approval from the Architectural Review Board before the roof was replaced; and while ignorance of the law is no excuse, knowledge of the law is an every day learning experience.
- Mr. Tozier contracted to purchase the house from Mr. George Bristol and as a part of the negotiations, a reduction in the price of the house, or replacement of the roof, was offered; and Mr. Bristol agreed; as seller of the house, to undertake replacement of the roof.
- Mr. Tozier proceeded with purchase of the house and Mr. Bristol engaged the services of a roofer to replace the roof.
- No building permit is required for replacement of a roof.
- Following closing proceedings on the property, the error was called to Mr. Tozier's attention.
- The roof on Mr. Tozier's house is similar to other roofs in the neighborhood.

Tony Barnes, roofer, advised that the roof was rusting underneath and appeared to have been patched on numerous occasions, therefore, the roof was not salvageable.

In view of the fact that the roof needed to be replaced, replacement of the roof was a part of the conditions of sale of the property, and the similarity of the new roof to other roofs in the neighborhood, Mr. Natt requested that Council over turn the decision of the Architectural Review Board.

Jackie Cannaday, 424 Washington Avenue, S. W., President, Old Southwest, Inc., requested that Council affirm the decision of the Architectural Review Board regarding replacement of the roof at 365 Washington Avenue, S. W. She advised that H-2 guidelines clearly state that the same materials and design must be used in order to replace an existing roof; although the homeowner reports that he did not know about the guidelines, his contractor previously acquired a Certificate of Appropriateness to replace a roof at a home on the next block; and a street sign on the corner of Washington Avenue and Franklin Road states that the area is designated as a historic district. She stated that the roof is a prominent feature of any house, but particularly so in Old Southwest due to the number of standing seam metal roofs and slate roofs in the neighborhood; and any change from original roofing materials or design

alters the overall appearance of the home and its architectural integrity. She added that if the historic guidelines are not enforced, the architectural integrity of the neighborhood will be lost; Old Southwest stands behind the H-2 guidelines in order to maintain the historic and architectural integrity of the neighborhood, and it is hoped that Council will enforce the H-2 guidelines.

Robert B. Manetta, Vice-Chair, Architectural Review Board, advised that:

- Section 36.1-345(c) of the Zoning Ordinance provides:

“The replacement of roofing materials shall not require a certificate of appropriateness, provided that such installation or replacement is performed using materials which are of the same design as those on the building, structure or landmark, and provided that such installation or replacement maintains the architectural defining features of the building, structure or landmark.

- The materials being used were not the same material or design as the original and the architectural defining features of the building were not maintained as a result of the project; the project, therefore, required a Certificate of Appropriateness.
- The H-2 Architectural Design Guidelines adopted by the Architectural Review Board and endorsed by Council state that architectural styles are often identified by the form and materials of the roof, which is an important design feature; a well maintained roof and gutter system will help prevent the deterioration of other parts of a building; changing, removing, or adding materials or features to a roof can often alter or destroy a building's character; the guidelines further recommend that the following be considered specifically when evaluating roofs:

Identify and keep original materials and features of roofs.

Do not remove historic roofing materials, such as slate, clay, tile, wood shingles, or metal, that are still in good overall condition.

Keep standing seam roofs painted and all seams tightly crimped.

When it is not feasible to replace standing-seam metal roofs with the same materials, explore the use of prefabricated battened-metal roof systems.

- Since January 1, 2000, there has been no request to the Architectural Review Board to approve the replacement of standing-seam metal with fiberglass shingles on the main roof of a house; there have been two requests, however, including one at the April 2004 Board meeting that were approved to replace slate shingles with architectural grade fiberglass shingles that emulated slate shingles; the projects were approved because the applicant provided sufficient detail and proposed to apply the materials in a manner that preserved the character of the structure.

On behalf of the Architectural Review Board, Mr. Manetta recommended that Council affirm the decision of the Board to deny the issuance of a Certificate of Appropriateness.

Following discussion of the matter, based on evidence, testimony and documents, Mr. Harris moved that Council affirm the decision of the City of Roanoke Architectural Review Board on March 1, 2004, that no Certificate of Appropriateness be issued for roof replacement at 365 Washington Avenue, S. W., as set forth in the Petition of Appeal, on the grounds that the proposed installation would not be compatible with the architectural defining features of the building. The motion was seconded by Mr. Bestpitch.

If Council votes to affirm the decision of the Architectural Review Board, question was raised in regard to options, if any, that are available to the petitioner; whereupon Mr. Townsend advised that the petitioner requested the Architectural Review Board to approve the asphalt shingle roof; if Council upholds denial by the Architectural Review Board, the applicant has 30 days stay in order to appeal the decision of the Council to the Circuit Court; and after that time, if the petitioner does not choose to appeal, he will be in violation of the City's Zoning Ordinance. He reviewed the following options: the petitioner can present a new proposal to the Architectural Review Board for a different type of roof, and offer modifications to the current roof to determine if the changes/modifications are amenable to the Board; the petitioner can remove the roof and re-establish a metal seam roof on the house in some manner similar to the original roof; and other roof materials could be proposed to the Architectural Review Board for consideration.

As a compromise, question was raised as to whether improvements could be made to the house such as changing a window or a porch, etc., that would be more amenable to the neighborhood; whereupon, Mr. Townsend advised that given the fact that a shingle roof was installed, not a great deal can be done to supplement or compliment the existing roof. He stated that the biggest concern is the existence of one house with two very different styles of roofing material, therefore, it is difficult to modify one or the other while bringing both into a compatible nature.

The Mayor inquired if Mr. Tozier was willing to make any compromise proposals; whereupon, Mr. Natt advised that the petitioner has offered to remove the porch awning and repair the metal porch roof.

The motion offered by Mr. Harris, seconded by Mr. Bestpitch, to affirm the decision of the Architectural Review Board, was adopted by the following vote:

AYES: Council Members Cutler, Bestpitch, Dowe, Fitzpatrick, Harris, and Wyatt-----6.

NAYS: Mayor Smith-----1.

ARCHITECTURAL REVIEW BOARD: Mr. Steven Duggar presented an appeal to a decision of the Architectural Review Board rendered on April 8, 2004, pursuant to Section 36.1-642(d), Code of the City of Roanoke, (1979), as amended, with regard to property located at 717 Highland Avenue, S. W., which property is located in the H-2, Neighborhood Preservation District.

Mr. Duggar advised that the windows were replaced with vinyl windows inasmuch as the original windows were damaged by age; the contractor installed the same design as the old windows in order to keep coal dust and noise from trains to a minimum; however, in stating the grounds for appeal, the Architectural Review Board maintained that the muntins do not have the same shadow depth.

Jackie Cannaday, 424 Washington Avenue, S. W., President, Old Southwest, Inc., requested that Council uphold the decision of the Architectural Review Board. She advised that the guidelines specifically state that windows can only be replaced if the same materials and design are used; the home owner did not follow the guidelines, nor did he apply for a Certificate of Appropriateness to replace the windows; the fact that the homeowner had acquired a prior Certificate to construct a deck behind his home suggests that he was aware of the H-2 guidelines; the windows of the house are one of the most defining features of a home because they provide the scale and character that make the house unique; the use of exterior muntins on windows as often

seen in older homes adds to the depth by creating a shadow line; when new windows are installed without exterior muntins, this affect is lost, thus, altering the appearance of the home; the architecture and history of homes make Old Southwest a historic neighborhood; and if architectural details of the homes are not maintained, the houses will loose their uniqueness. She advised that Old Southwest, Inc., does not want to alienate residents and property owners, but residents strongly encourage the City to enforce the H-2 guidelines because it is believed that this case will set a precedent for how the Architectural Review Board will be viewed in the future and how the H-2 guidelines will be enforced.

Robert B. Manetta, Vice-Chair, Architectural Review Board, advised that:

- Section 36.1-345(c) of the Zoning Ordinance provides:

"The replacement of windows shall not require a certificate of appropriateness provided that such installation or replacement is performed using materials which are of the same design as those on the building, structure or landmark, and provided that such installation or replacement maintains the architectural defining features of the building, structure or landmark."

- The materials being used were not of the same design as the original material and the architectural defining features of the building were not maintained as a result of the project; the project, therefore, required a Certificate of Appropriateness.
- The H-2 Architectural Design Guidelines adopted by the Architectural Review Board and endorsed by Council state that windows and doors are especially important in rehabilitation; their size, shape, pattern, and architectural style not only provide architectural character but also give a building much of its scale and detail; the guidelines further recommend that the following be considered specifically when evaluating windows:

Identify and keep the original materials and features of windows, such as size, shape, glazing, muntins and moldings.

Consider new replacement windows only when old replacements are unavailable; new replacements should be compatible in size and shape, design, and proportion.

Use storm windows to improve thermal efficiency of existing windows.

- Since January 1, 2000, there have been 15 window replacement approvals in the H-2 District (1 from the Architectural Review Board and 14 administratively).

On behalf of the Architectural Review Board, Mr. Manetta recommended that Council affirm the Board's decision to deny the issuance of a Certificate of Appropriateness for property located at 717 Highland Avenue, S. W.

The Mayor inquired if there is a way to inform purchasers of property in Old Southwest that the property is located in an historic district; whereupon, the City Attorney advised that there is no specific legal requirement that a notice be provided to a new purchaser, or that notice be appended to a deed or recorded in the Clerk's Office to put the purchaser on notice; however, zoning is a part of the title process which should be reflected in the title report that the property is located in an historic district.

The City Manager advised that when a property transfer occurs in the future, City staff will identify ways in which the property owner will be notified that the property is located in the historic district, including guidelines for addressing improvements to property in the historic district.

Council Member Wyatt made the observation that potential purchasers of property in the historic district should be notified by the realtor handling the transaction prior to purchase of the property that the property is located in an historic district and that certain guidelines are applied with regard to improvements and renovations to homes in the historic district. She stated that after the property has been purchased, it is too late to put the purchaser on notice.

Mr. Manetta concurred in the need to include a notice in the transfer of property stating that the house is located in the historic district. He explained that currently a building permit is not required to replace roofs, install siding, and replace windows, therefore, he would ask that Council encourage the General Assembly to enact legislation that will require a building permit for such purposes in the historic districts. Thirdly, he suggested that building contractors be notified of regulations that apply to historic neighborhoods.

Mr. Townsend expanded on Mr. Manetta's remarks by advising that a building permit is no longer required for installation of fences and walls below four feet in height which is also an important issue in the historic district.

Following further discussion, based on the evidence, testimony and documents, Mr. Bestpitch moved that Council affirm the decision of the City of Roanoke Architectural Review Board on April 8, 2004, that no Certificate of Appropriateness be issued for the replacement of vinyl windows, as set forth in the Petition of Appeal, on the grounds that the installation is not compatible with the architectural defining features of the building. The motion was seconded by Mr. Dowe and adopted by the following vote:

AYES: Council Members Bestpitch, Cutler, Dowe, Fitzpatrick, Harris and Wyatt-----6.

NAYS: Mayor Smith-----1.

HEARING OF CITIZENS UPON PUBLIC MATTERS: The Mayor advised that Council sets this time as a priority for citizens to be heard, and matters requiring referral to the City Manager will be referred immediately for any necessary and appropriate response, recommendation or report to Council.

AIRPORT-TRAFFIC: Mr. Chris Craft, 1501 East Gate Avenue, N. E., expressed appreciation to Mayor Smith and Council Members Bestpitch and Wyatt for their service on Council. He commended the City on plans to relocate the entrance to the Roanoke Regional Airport and the installation of a traffic light.

COMPLAINTS-CITY EMPLOYEES: Mr. Robert Gravely, 729 Loudon Avenue, N. W., expressed concern with regard to overall conditions in the City of Roanoke, the need to talk with citizens to learn more about issues of concern, appropriate application of the law, and the City's inadequate pay scale and pay for performance program which does not bring the salary of the average City employee to an acceptable level.

There being no further business, the Mayor declared the meeting adjourned at 9:00 p.m.

A P P R O V E D

ATTEST:

Mary F. Parker
City Clerk

Ralph K. Smith
Mayor
